

**SECTION 5-40. OF THE FAYETTE COUNTY ZONING ORDINANCE
(FAYETTE COUNTY TOWER ORDINANCE)**

5-40. Standards for Telecommunications Antennas and Towers. (Amended in its entirety and adopted 12/10/98)

A. Purpose and Intent. The purpose of this ordinance is to establish minimum development standards for the regulation of commercial telecommunications transmissions towers, including but not limited to, cellular and Personal Communications Systems (PCS) towers, broadcasting towers, two-way radio towers, fixed-point microwave dishes, commercial satellites and receiving dishes, and related accessory equipment and buildings. The intent of this ordinance is to: (1) to implement the provisions of the Telecommunications Act of 1996 on a local level; (2) to control placement of towers and antennas in a way that minimizes the adverse visual impact to nearby properties by locating towers and antennas in non-residential areas or in areas where the adverse impact on the community is minimal, and (3) to advocate the shared use of new and existing tower sites through co-location thereby discouraging the proliferation of towers throughout Fayette County.

B. Applicability.

1. District Height Limitations. The requirements set forth herein shall govern the location of towers that exceed, and antennas that are installed at a height in excess of, the height limitations specified for each zoning district. The height limitations applicable to buildings and structures shall not apply to towers and antennas.

2. Public Property. If this section prohibits a government owned tower from being located at a specific site and the tower is required to protect the public welfare or safety, the applicable criteria of this section may be waived or modified by the Board of Commissioners (B.O.C.). In such cases the B.O.C. shall make a finding of fact indicating the justification for the modification.

3. Amateur Radio Antennas. This ordinance shall not govern any amateur radio tower, or the installation of any antenna, that is under seventy (70) feet in height and is owned and operated by a federally-licensed amateur radio station operator.

4. Pre-Existing Towers and Antennas.

a. Any tower or antenna which existed prior to June 27, 1996 shall be deemed a pre-existing tower and shall not be required to meet the requirements of this ordinance, other than the applicable requirements of Sections 5-40.F. and G. herein. Additions to or the enlargement of towers and/or tower facilities that were constructed and antennas that were installed prior to June 27, 1996, shall not be deemed to constitute the expansion or enlargement of a nonconforming use or structure.

- b. Co-location of antenna on a pre-existing tower which does not comply with the setback requirements of this ordinance may locate proposed accessory equipment buildings within the existing fenced area provided the minimum setbacks of the existing tower facilities are met, and that the height of the pre-existing tower is not increased by the proposed antenna. All other requirements of Section 5-40 stated herein shall apply.
 - c. Per Section 5-40.H. herein, an annual Tower In Use Certification shall be required and any pre-existing towers or antennas that are not in use for a continuous period of twelve (12) months shall be removed.
- 5. Replacement of an existing tower structure is permitted provided that all of the following apply: (Added in its entirety 05/25/00)
 - a. The replacement tower is constructed on site within close proximity to the existing tower at the same or greater setbacks than previously established;
 - b. The replacement tower complies with the height requirements for the area in which it is located;
 - c. The tower being replaced is removed from site within fifteen (15) calendar days from the issuance of the Certificate of Occupancy for the new tower;
 - d. Additional co-location opportunities on the new tower are made available with the minimum users required based on tower height;
 - e. Proposed accessory equipment buildings comply with established setbacks for existing tower facilities without increasing nonconformity; and,
 - f. A site plan for the new tower facilities is administratively approved.

C. Permitted Uses.

- 1. General. Permitted uses shall not require administrative approval or public hearings, but shall comply with the applicable requirements of Sections 5-40.F. and G. herein and all other applicable ordinances.

Specific Permitted Uses.

- a. Installing an antenna on an existing structure, so long as said installation adds no more than twenty (20) feet to the height of said existing structure (including buildings, light poles, water towers, or other free standing non-residential

structures excluding signs).

- b. Installing an antenna on any existing tower, so long as said installation adds no more than twenty (20) feet to the height of said existing tower and the tower is not a pre-existing tower.
- c. Adding on to an existing mechanical or accessory building, or placement of additional equipment cabinets or buildings at a tower site as part of co-location.

D. Use by Right Administrative Approvals.

General. The following provisions shall require an administrative approval and shall comply with Sections 5-40.F. and G. herein and all other applicable ordinances. Applicants shall apply to the Zoning Department in conjunction with the site plan review process.

- 1. Highway Corridor. Locating towers along the following highway corridors, rather than in residential areas, is specifically encouraged and is permitted as a floating zone (within any zoning district) provided all the following requirements are met:
 - a. The State and County Highways included within the Highway Corridor are S.R. 54 (East and West), S.R. 85 (North and South), S.R. 92 (North and South), S.R. 74, S.R. 314, S. R. 279, S.R. 138, 85 Connector, and Bernhard Road (future east-west arterial).
 - b. The Highway Corridor tower floating zone permits towers as a Use by Right in any zoning district when located within 1,000 feet of the right of way on either side of the above roads in unincorporated areas of Fayette County, provided the tower complies with all required regulations of Section 5-40.
(Amended 05/25/00)
 - c. Towers within the Highway Corridor are restricted to a maximum of 250 feet in height as an administrative approval, shall be either a monopole or lattice tower, and shall be engineered to accommodate a minimum of five (5) users.
(Amended 03/25/99)
 - d. Towers in excess of 250 feet in height in the Highway Corridor shall require public hearings, can be either a monopole or lattice tower at the discretion of the Boards, and shall be engineered to accommodate six (6) or more users depending on the height of the tower. (Amended 03/25/99)
 - e. The minimum distance between any existing or planned towers in the Highway Corridor shall be one (1) linear mile. The minimum distance requirement shall apply to existing and planned towers within any local government jurisdiction.

- f. No equipment buildings, support structures, or tower equipment can be visible from the highway. Landscaping shall be staggered double rows of evergreen trees a minimum of six (6) feet in height when planted and spaced every ten (10) feet on center, and supplemented with shrubs a minimum of three (3) feet in height when planted and spaced every eight (8) feet on center, for a completely screened, opaque look around the entire fenced tower facility.
- 2. County-Owned Property. Towers may locate on County-owned property (except public schools) at a maximum height of 250 feet as a Use by Right Administrative Approval. The County Attorney shall negotiate compensation for the leased parcel for the tower. Prior to site plan approval, the tower owner and subsequent users of the tower shall be required to execute a written agreement, in a form acceptable to the County Attorney, which releases the County from all liability regarding the tower.
(Amended 03/25/99)
- 3. Other Specific Administrative Approvals.
 - a. Locating any tower or alternative tower structure that is 180 feet or less in height in areas other than the Highway Corridor, provided a licensed professional engineer certifies that said tower can structurally accommodate the required number of shared users, and that the Zoning Administrator concludes the tower satisfies the requirements of Sections 5-40.F. and G., and that the tower meets the following height and usage criteria:
(Amended 03/25/99)
 - 1. Single user: up to seventy (70) feet;
 - 2. Two users: up to 120 feet;
(Amended 03/25/99)
 - 3. Three users: up to 150 feet; and,
(Amended 03/25/99)
 - 4. Four or more users: up to 180 feet. (Added 03/25/99)
 - b. All new towers located in the A-R zoning district shall be required to be constructed as monopoles and shall be a minimum of 1,000 feet from the nearest residence, excepting only the residence located upon the same lot as the tower.

E. Public Hearing Required.

- 1. General. If the proposed tower or antenna is not included under the specific permitted

uses, Section 5-40.C. or included as a specific administratively approved use, Section 5-40.D., then a public hearing shall be required for the approval of the construction of a tower or the placement of an antenna in all zoning districts. All such uses shall comply with Sections 5-40.F. and G. herein and all other applicable ordinances. Applicants shall apply for a public hearing through the Zoning Department.

- a. In granting an approval, the governing authority may impose conditions to the extent the governing authority concludes such conditions are necessary to minimize any adverse effect of the proposed tower on adjoining properties.
2. Factors Considered in Public Hearing Applications. The governing authority shall consider the following factors in determining whether to approve an application, although the governing authority may waive or reduce the burden on the applicant of one or more of these criteria, if in the sole discretion of the governing authority, the goals of this ordinance are better served thereby:
 - a. Height of the proposed tower;
 - b. Proximity of the tower to residential structures and residential zoning district boundaries;
 - c. Nature of uses on adjacent and nearby properties;
 - d. Surrounding topography;
 - e. Surrounding tree coverage and foliage;
 - f. Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness; and
 - g. Proposed ingress and egress.
3. In granting its approval, the County, through the Board of County Commissioners or its designee, may impose special conditions that it feels are necessary to minimize the adverse effect of a proposed tower or antenna on adjoining property.

F. Development Requirements.

1. Tower facilities may be located only in the following zoning districts, with the exception of towers located within an established Highway Corridor floating zone:
Manufacturing and Heavy Industrial District (M-2);
Light Industrial District (M-1);
Highway Commercial District (C-H);

Community Commercial District (C-C); and
Agricultural Residential (A-R).

2. Lot Area. Tower facilities shall be on a lot which meets the minimum lot size for the district in which it is located. Tower facilities may be located on a lot containing another principal or accessory use. A tower may occupy a leased parcel being a portion of the lot (parent parcel). For purposes of determining if a tower or antenna complies with the minimum tower setbacks, the boundaries of the entire lot (parent parcel) shall control.
3. All new towers over seventy (70) feet in height shall not be located within two (2) linear miles from any existing or planned tower that is over seventy (70) feet in height, with the exception of proposed towers within the Highway Corridor. The minimum distance requirement shall not apply from existing government-owned towers where co-location is not permitted.
4. Towers shall not be located on the same lot as a school or day-care center.
5. Setbacks: Setbacks for tower facilities shall be measured from the boundaries of the lot, not the boundaries of the leased parcel to the nearest tower facilities including all equipment, slabs, or other structures associated with the operation of the tower.
 - a. All towers and tower facilities located outside the Highway Corridor shall be set back from all adjoining properties zoned residential or A-R a distance equal to the height of the tower or 200 feet, whichever is greater.
 - b. All towers and tower facilities located outside the Highway Corridor shall be set back from all adjoining properties zoned non-residential a distance equal to the height of the tower or 100 feet, whichever is greater.
 - c. All towers and tower facilities located within the Highway Corridor shall be set back as follows:
 - (1) A minimum of 100 feet from the ultimate planned right of way line;
 - (2) A minimum of 50 feet from all adjoining properties zoned non-residential;
 - (3) A minimum of 200 feet from all adjoining properties zoned residential or A-R or the height of the tower, whichever is greater; and
 - (4) A minimum of 1,000 feet from the nearest residence except for a residence located on the same lot as the tower.
6. All anchors for guyed towers shall comply with the minimum setbacks of the zoning district.
7. Security Fencing. All tower facilities shall be enclosed by a steel chain link fence not less than eight (8) feet in height, with vinyl slat inserts for screening. Access to the

communication tower shall be through a locked gate. In addition, a minimum of three (3) strands of barbed wire shall be used along the top of the fence to prevent unauthorized access to the tower.

8. Landscaping. Unless otherwise specified herein, the Development Regulations of Fayette County shall apply.

- a. The tower and related facilities shall be landscaped with a standard buffer that shall consist of a landscaped strip ten (10) feet in width surrounding the perimeter of the tower and any accessory structures. The buffer shall consist entirely of evergreens, and once installed shall be a minimum of six (6) feet in height at time of planting.
- b. Existing mature tree growth and natural land forms on the site shall be preserved to the maximum extent possible. In some cases, such as towers sited on large wooded lots, the Zoning Administrator may determine that natural growth around the property perimeter may be a sufficient buffer, in lieu of the required landscaping. If existing vegetation to remain is requested to count toward the landscaping requirements, all such information, including location, size, and type of vegetation shall be indicated on the site/landscape plan.
- c. Landscaping shall be installed on the outside of required fence.

9. Maximum height for all towers and antennas is 500 feet. Tower height shall be measured from the natural grade of the ground at the location of the tower to the highest point of the tower, including any antenna. If minimal grading (elevation of one to two feet above natural grade) is required to level the ground for the tower base, tower height shall be measured from the finished grade approved by the County Engineer. (Amended 02/24/00)

G. Supplemental Requirements.

1. Application Requirements: All applicants for new tower construction shall include the following information at time of application submittal: site and landscape plans drawn to scale; a report including all tower specifications and a description of the tower with technical reasons for its design; documentation establishing the structural integrity for the tower's proposed uses; the general capacity of the tower and information necessary to assure that ANSI standards are met; a statement of intent on whether excess space will be leased; proof of ownership of the proposed site or authorization to utilize it; and copies of any easements necessary.
2. Inventory of Existing or Planned Tower Sites. No new tower shall be permitted unless the applicant demonstrates to the satisfaction of the County that no existing tower nor any towers in the approval process can accommodate the applicant's proposed antenna. All evidence shall be signed and sealed by appropriate licensed professionals or qualified

industry experts. All of the following shall be required to sufficiently demonstrate that no existing or planned tower can accommodate the proposed antenna:

- a. Each applicant for a tower or antenna shall contact the owners of all existing and planned tower sites, including those located within the zoning jurisdictions of municipalities and/or other counties, that are within the service operating area of the applicant's proposed tower or antenna location, and provide the Zoning Department with an inventory of said tower sites at the time of application submittal. The inventory must include the following information:
 - (1) All property owners and the lessees for each tower site;
 - (2) The site location, total height, and design type of each tower;
 - (3) Details of all existing and any planned towers or structures located within the geographic service area and the ability of such to meet the applicant's engineering requirements, including but not limited to: sufficient height, structural support strength, and electromagnetic interference with antenna(s) on the existing towers or structures;
 - (4) Comparison of all fees or costs required to co-locate on an existing tower or structure versus construction of a new tower if proposed. Applicants shall submit in writing a detailed estimate of total co-location development costs for each site and the estimated cost for development of a new tower;
 - (5) Other limiting factors that render existing towers and structures unsuitable; and
 - (6) Letters of rejection for requests to co-locate on all existing and planned towers within the service area of the proposed tower.
- b. The Zoning Department may share such information with other applicants applying for approval under this ordinance or other organizations seeking to locate antennas within the jurisdiction of the governing authority, provided, however, that the Zoning Department is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.
- c. If it is determined that the applicant cannot feasibly locate an antenna on an existing tower, the applicant must then demonstrate that the proposed new tower is designed so that it can accommodate additional antennas as height requirements permit. No single-purpose towers over 70 feet will be permitted unless conclusive proof can be submitted that there is no other feasible alternative.

3. Site Plan Approval. All tower applicants for new towers or co-location on existing towers shall be required to submit a scaled site plan which complies with all applicable requirements of the Development Regulations. Additional information indicated on the site plan must include, total tower height including antennas, type and design of all tower facilities, including equipment buildings or cabinets, maximum effective radiated power, ingress/egress, landscaping and buffer requirements, setbacks, fencing, zoning of adjacent property and other information necessary to assess compliance with this ordinance. Any information of an engineering nature that the applicant submits, whether civil, mechanical, or electrical, shall be certified by a licensed professional engineer. Site plan submittal shall include completion of a tower application, signed and notarized by both the property owner and the tower company representative/agent.
4. Aesthetics and Lighting. The following compatibility standards shall govern the aesthetics and lighting of all tower facilities, including the installation of antennas on towers.
 - a. Towers shall either maintain a galvanized steel finish or, subject to any applicable standards of the F.A.A., be painted a neutral color, so as to reduce visual obtrusiveness.
 - b. At a tower site, the design of the buildings and related structures shall use materials, colors, textures, screening, and landscaping that will blend the tower facilities to the natural setting and built environment as much as possible.
 - c. If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment shall be architecturally compatible with, the color and texture of the supporting structure, and if roof mounted shall be screened by a parapet wall, so as to make the antenna and related equipment visually unobtrusive.
 - d. Towers shall not be artificially lighted, unless required by the F.A.A. or other applicable authority. If lighting is required, the governing authority may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views.
5. Federal Requirements. All towers must meet current standards and regulations of the Federal Aviation Administration (F.A.A.), the Federal Communications Commission (F.C.C.), and any other agency of the federal government with the authority to regulate towers and antenna, including modulation studies on frequency usage, to avoid interference with existing systems in operation. Prior to submittal for an administrative site plan approval, applicants shall be required to submit written approval from the F.A.A. which states that the proposed communications towers does not encroach onto or through any established public or private airport approach path or federal airspace as established by the F.A.A.

6. Building Codes; Safety Standards. To ensure the structural integrity of towers, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable local building codes and the applicable standards for towers that are published by the Electronic Industries Association, as amended. If, upon inspection, the governing authority concludes that a tower fails to comply with such codes and standards or that such tower constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have sixty (60) days to bring such tower into compliance.
7. County's Right to Co-locate. Fayette County shall have the right to co-locate emergency/public safety equipment at no cost on any approved tower within the County's jurisdiction, provided that the co-location of antennas do not interfere with the normal tower operations. Reserved space on each new tower shall be required for future County co-location.

H. Performance Bond Required.

Prior to the issuance of a Zoning Compliance certificate to erect a new tower structure, every applicant shall be required to deposit a performance bond with Fayette County. The amount of the Bond, not less than \$5,000 nor more than 10% of construction costs, shall be set by the Zoning Administrator. Such bond shall be required upon compliance with all aspects of this Section and shall be applicable to any assignee and owner of any permit granted hereunder, or any employee, contractor, subcontractor, or other party performing services in connection with any Certificate of Zoning Compliance issued by the Zoning Department. The required performance bond shall be released only upon demolition of the tower and restoration of the site to the pre-development conditions. The format of the bond shall be approved by the County Attorney.

- I. Tower In Use Certification. An annual Tower In Use Certification shall be required for any tower or antenna previously permitted or currently in use as of June 27, 1996. Said certification shall include the total height of the tower and a list of all current users and their height on the tower. Said certification shall be submitted to the Zoning Department, signed and notarized by the tower company representative/agent, by the 31st of January each year. Failure to submit said certification may result in the issuance of a violation.
- J. Removal of Abandoned Antennas and Towers. Prior to the abandonment of any tower or antenna, a copy of the notice of Intent to Abandon required by the F.C.C. shall also be submitted to the Fayette County Zoning Department. Any antenna or tower, including pre-existing towers and antennas, that is not in use for a continuous period of twelve (12) months shall be considered abandoned, and the owner of such antenna or tower shall remove same within ninety (90) days of receipt of notice from the governing authority notifying the owner of such abandonment. If there are two (2) or more users of a single tower, then this provision shall not become effective until all users cease using the tower.

